

Justice Dept. issues non-disclosure rules

The Justice Department has issued detailed rules to keep Federal employees or contractors from making unauthorized disclosures of classified information that they learn at work.

To hold their jobs, employees of contractors with high-level security clearance must sign statements that unless they get advance permission they will not disclose in writing or orally any information that is classified, or classifiable, for national security reasons.

Applies to news stories

The prohibition specifically applies to disclosures in books, magazines, newspaper stories, letters to the editor, scholarly papers, notes for speeches, or fiction. Possessors of classified information must get advance permission before they even discuss the material with publishers, editors, ghost writers, spouses or friends. Violators can be fired, forced to turn over to the government any profits they make from unauthorized disclosures, or prosecuted under established criminal statutes.

The restrictions apply forever to all present or future Federal employees or contractors with high security clearance, and the government wants former employees to observe the rules voluntarily "for their own protection."

No penalties

The program provides no penalties for persons such as news reporters who receive unauthorized information.

Persons contemplating public disclosure of data that is classified, or

possibly subject to classification on national security grounds, are required to submit the material in advance to the department or agency which last gave them security clearance. Officials promise to censor only for security reasons, not to avoid embarrassing anyone, and they promise answers within 30 days. Rejected applicants can appeal once within the department or agency and, if unsuccessful, can ask a federal court to rule whether any suppression of information was justified.

The program announced by the Justice Department (August 24) implements the executive order which President Reagan issued last March to extend non-disclosure requirements to all Federal employees and contractors. Until then, the government had required non-disclosure pledges primarily from members of the intelligence community.

In announcing details for carrying out the President's executive order, the Justice Department endorsed as legally enforceable, two similar non-disclosure statements—one to be signed by persons receiving top secret, secret or confidential information; and another to be signed by persons receiving Sensitive Compartmented Information (SCI) which is more sensitive than top secret, and involve knowledge about intelligence methods, or the fruits of intelligence work.

Statement

Persons receiving SCI information will be required to sign a statement including:

"I will never divulge such information unless I have officially verified in writing that the recipient has been properly authorized by the U.S. Government to receive it or I have been given prior written notice of authorization from the U.S. Government department or agency last granting me either a security clearance or an SCI access approval that such disclosure is permitted."

"I hereby agree to submit for security review by the department or agency . . . all materials, including fiction, that I contemplate disclosing to any person not authorized to have such information."

Federal officials declined to say how many persons will be affected by the program because the figure might give some indication of the size of the American intelligence community. In the Justice Department alone, there are 58,000 employees, with 32,000 of them having some kind of security clearance. These include 2,000 in the Federal Bureau of Investigation and another 500 in the parent Justice Department who have SCI clearance.

The legal rationale for the non-disclosure pledges was given by Richard K. Willard, Deputy Assistant Attorney General, in a letter to the General Services Administration.

"The protection of national security information is a primary and fundamental constitutional responsibility of the President that derives from his responsibilities as chief executive, Commander in Chief, and the principal instrument of U.S. foreign policy," Willard wrote. "Agreements to preserve the secrecy of classified information are an appropriate method for the President to discharge these constitutional responsibilities."

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Key sections of secrecy order

Herewith are key sections of a Justice Department order detailing how it will enforce President Reagan's executive order barring government employees or contractors from unauthorized disclosure of classified information.

(The order is worded to apply to the Justice Department, but other government departments and agencies are scheduled to issue virtually identical orders to their own employees and contractors.)

"The President has directed that all persons with authorized access to Sensitive Compartmented Information (SCI) be required to sign non-disclosure agreements containing a provision for prepublication review to assure deletion of SCI and other classified information. SCI is information that not only is classified for national security reasons as top secret, secret or confidential but also is subject to special access and handling requirements because it involves or derives from particularly sensitive intelligence sources or methods.

"Employees with access to SCI will be required to sign agreements providing for prepublication review. Prepublication review is required only as expressly provided for in an agreement. However, all persons who have had access to classified information have an obligation to avoid unauthorized disclosures of such information and are subject to enforcement actions . . . present or former employees are encouraged voluntarily to submit material for prepublication review if they believe that such material may contain classified information even if such submission is not required by prepublication review agreement. Where there is any doubt, present and former employees are urged to err on the side of prepublication review . . . "

(Section 5-D) "Present or former employees who have signed agreements providing for prepublication review are required to submit any material prepared for disclosure to others that contains or purports to contain (1) any SCI, any description of activities that produce or relate to SCI, or any information derived from SCI; (2) any classified information from intelligence reports or estimates; or (3)

any information concerning intelligence activities, sources or methods.

"The term 'intelligence activities' in paragraph 5-D(3) (above) means all activities that agencies within the intelligence community are authorized to conduct pursuant to Executive Order 12333 (issued by Reagan in March). However, there is no requirement to submit for review any materials that exclusively contain information lawfully obtained at a time when the author has no employment, contract, or other relationship with the U.S. Government and which are to be published at such time."

"A person's obligation to submit material for prepublication review remains identical whether such person actually prepares the material or causes or assists another person, such as a ghost writer, spouse or friend, or editor in preparing the material. Material described in paragraph 5-D must be submitted for prepublication review prior to discussing it with or showing it to a publisher, co-author, or any other person who is not authorized to have access to it. In this regard, it should be noted that a failure to submit such material for prepublication review constitutes a breach of the obligation and exposes the author to remedial action even in cases where the published material does not actually contain SCI or classified information.

"The requirement to submit information or materials for prepublication review is not limited to any particular type, of material or disclosure. Written materials include not only books but all other forms of written material intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book review, pamphlets, and scholarly papers. Because fictional treatment may convey factual information, fiction is also covered if it is based upon or reflects information described in paragraph 5-D.

"Oral statements are also included when based upon written materials such as an outline of the remarks. There is no requirement to prepare such material for prior review, however, unless there is reason to believe in advance that oral statements may contain SCI or other classified information. Thus, a person may participate in an oral

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presentation of information where there is no opportunity for prior preparation (e.g., news interview, panel discussion) unless there is reason to believe in advance that such oral expression may contain SCI or other classified information.

"This recognition of the problems with oral representations does not, of course, exempt present or former employees from liability for any unauthorized disclosure of SCI or classified information that may occur in the course of even extemporaneous oral expressions.

"Material that consists solely of personal views, opinions or judgments and does not contain or imply any statement of fact that would fall within the description in paragraph 5-D is not subject to the prepublication review requirement. For example, public speeches or publication of articles on such topics as proposed legislation or foreign policy do not require prepublication review as long as the material does not directly or implicitly constitute a statement of an informational nature that falls within paragraph 5-D. Of course, in some circumstances the expression of 'opinion' may imply facts and thus be of such a character as to require prior review.

"The purpose of prepublication review will be frustrated where the material in question already has been disseminated to unauthorized persons . . . while the department reserves the right to review such material for purposes of mitigating damage that may result from disclosure, such action shall not prevent the U.S. Government and the department from pursuing all appropriate remedies available under the law as a consequence of the failure to submit the materials for prior review and/or any unauthorized disclosure of SCI or classified information.

"Materials submitted for prepublication review will be reviewed solely for the purpose of identifying and preventing the disclosure of SCI and other classified information. This review will be conducted in an impartial manner without regard to whether the material is critical or favorable to the department. No effort will be made to delete embarrassing or critical statements that are unclassified. Materials submitted . . . will be disseminated to other persons or agencies only to the extent necessary to identify classified information . . .

"Priority shall be given to reviewing speeches, newspaper articles, and other materials that the author seeks to publish on expedited basis."